

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 27, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP865-CR

Cir. Ct. No. 2011CT206

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARVIN L. DILLMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: GARY R. SHARPE, Judge. *Affirmed.*

¶1 REILLY, J.¹ Marvin L. Dillman appeals from his conviction for second-offense operating a motor vehicle while under the influence of an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

intoxicant (OWI) on the ground that there was not reasonable suspicion to support the traffic stop that led to his arrest and conviction. We disagree and affirm.

BACKGROUND

¶2 Just before 1:00 a.m. on March 20, 2011, Dillman was stopped by Officer Rebecca Kollmann after she witnessed Dillman’s truck “sideways” on the road, accelerate quickly toward the curb, and then correct itself. At this point, Kollmann was approximately three blocks from the truck in a twenty-five mile-per-hour speed zone. Kollmann heard the truck’s engine roar and believed the truck’s driver had “floored it.” Kollmann, a ten-year veteran police officer, visually estimated the truck at speeds approaching forty to forty-five miles per hour. Kollmann’s squad car accelerated to fifty miles per hour over three or four blocks while following and catching up to Dillman’s truck. Based upon her observations, Kollmann stopped Dillman’s truck. Dillman was thereafter arrested for OWI.

¶3 Dillman filed a motion to suppress the evidence collected as a result of the traffic stop on the ground that Kollmann did not have reasonable suspicion to stop Dillman’s truck. The circuit court denied Dillman’s motion. Dillman subsequently pled no contest to OWI second offense. Dillman appeals.

STANDARD OF REVIEW

¶4 When reviewing a circuit court’s ruling on a motion to suppress evidence, we employ a mixed standard of review. *State v. Smiter*, 2011 WI App 15, ¶9, 331 Wis. 2d 431, 793 N.W.2d 920 (2010). This court will reverse a circuit court’s factual findings only if those findings are found to be clearly erroneous.

Id. Furthermore, this court applies a de novo standard to the constitutional principles applied to those facts. *Id.*

DISCUSSION

¶5 Dillman argues that there was not enough evidence to support the circuit court's finding that Kollmann had reasonable suspicion to perform a valid investigatory traffic stop on Dillman's truck. We disagree.

¶6 An investigatory traffic stop is justified by reasonable suspicion. *State v. Walli*, 2011 WI App 86, ¶9, 334 Wis. 2d 402, 799 N.W.2d 898. To determine if reasonable suspicion exists, this court examines the totality of the circumstances surrounding the stop. *Id.*, ¶8. The fundamental focus of the reasonable suspicion requirement in traffic stops is reasonableness. *See State v. Anderson*, 155 Wis. 2d 77, 83, 454 N.W.2d 763 (1990). An officer's training and experience may be used in a court's determination of reasonableness. *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. In order to demonstrate reasonable suspicion, an officer must have a particularized and objective basis to believe that the person stopped is involved in, or was about to partake in, violating the law. *Walli*, 334 Wis. 2d 402, ¶9. This belief must be grounded in specific and articulable facts. *Id.*

¶7 Kollmann witnessed Dillman's truck sideways in the roadway and then travel at a speed in excess of the speed limit. Kollmann has ten years of experience as a police officer, including substantial amounts of training in regulation of speeding, along with issuing hundreds of tickets and warnings to speeders. Given Kollmann's experience, the totality of these articulable facts, and the reasonable inferences made by Kollmann, there was reasonable suspicion that Dillman was violating traffic laws prior to the stop.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

